

CHAMBER ACTION

1 The Justice Council recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to paternity; permitting a petition to set  
7 aside a determination of paternity or terminate a child  
8 support obligation; specifying contents of the petition;  
9 providing standards upon which relief shall be granted;  
10 providing remedies; providing that child support  
11 obligations shall not be suspended while a petition is  
12 pending; providing for scientific testing; providing for  
13 the amendment of the child's birth certificate; providing  
14 for assessment of costs and attorney's fees; repealing  
15 Rule 1.540, Florida Rules of Civil Procedure, relating to  
16 relief from judgment, decrees, or orders; providing a  
17 contingent effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21 Section 1. (1) This section establishes circumstances  
22 under which a male may disestablish paternity or terminate a  
23 child support obligation when the male is not the biological

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24 father of the child. To disestablish paternity or terminate a  
25 child support obligation, the male must file a petition in the  
26 circuit court having jurisdiction over the child support  
27 obligation. The petition must be served on the mother or other  
28 legal guardian or custodian of the child. If the child support  
29 obligation was determined administratively and has not been  
30 ratified by a court, then the petition must be filed in the  
31 circuit court in the county where the mother or legal guardian  
32 or custodian resides. Such a petition must be served on the  
33 Department of Revenue and on the mother or legal guardian or  
34 custodian. In the event that the mother or legal guardian or  
35 custodian no longer resides in the state, the petition may be  
36 filed in the circuit court in the county where the petitioner  
37 resides. The petition must include:

38 (a) An affidavit executed by the petitioner that newly  
39 discovered evidence relating to the paternity of the child has  
40 come to the petitioner's knowledge since the initial paternity  
41 determination or establishment of a child support obligation.

42 (b) The results of scientific tests that are generally  
43 acceptable within the scientific community to show a probability  
44 of paternity, administered within 90 days prior to the filing of  
45 such petition, which results indicate that the male ordered to  
46 pay such child support cannot be the father of the child for  
47 whom support is required or an affidavit executed by the  
48 petitioner stating that he did not have access to the child to  
49 have scientific testing performed prior to the filing of the  
50 petition. A male who suspects he is not the father but does not  
51 have access to the child to have scientific testing performed

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52 | may file a petition requesting the court to order the child to  
53 | be tested.

54 | (c) An affidavit executed by the petitioner stating that  
55 | the petitioner is current on all child support payments for the  
56 | child for whom relief is sought or that he has substantially  
57 | complied with his child support obligation for the applicable  
58 | child and that any delinquency in his child support obligation  
59 | for that child arose from his inability for just cause to pay  
60 | the delinquent child support when the delinquent child support  
61 | became due.

62 | (2) The court shall grant relief on a petition filed in  
63 | accordance with subsection (1) upon a finding by the court of  
64 | all of the following:

65 | (a) Newly discovered evidence relating to the paternity of  
66 | the child has come to the petitioner's knowledge since the  
67 | initial paternity determination or establishment of a child  
68 | support obligation.

69 | (b) The scientific test required in paragraph (1)(b) was  
70 | properly conducted.

71 | (c) The male ordered to pay child support is current on  
72 | all child support payments for the applicable child or that the  
73 | male ordered to pay child support has substantially complied  
74 | with his child support obligation for the applicable child and  
75 | that any delinquency in his child support obligation for that  
76 | child arose from his inability for just cause to pay the  
77 | delinquent child support when the delinquent child support  
78 | became due.

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79 | (d) The male ordered to pay child support has not adopted  
80 | the child.

81 | (e) The child was not conceived by artificial insemination  
82 | while the male ordered to pay child support and the child's  
83 | mother were in wedlock.

84 | (f) The male ordered to pay child support did not act to  
85 | prevent the biological father of the child from asserting his  
86 | paternal rights with respect to the child.

87 | (g) The child had not yet reached his or her 18th birthday  
88 | when the petition was filed.

89 | (3) Notwithstanding subsection (2), a court shall not set  
90 | aside the paternity determination or child support order if the  
91 | male engaged in the following conduct after learning that he is  
92 | not the biological father of the child:

93 | (a) Married the mother of the child while known as the  
94 | putative father in accordance with s. 742.091, Florida Statutes,  
95 | and voluntarily assumed the parental obligation and duty to pay  
96 | child support;

97 | (b) Acknowledged his paternity of the child in a sworn  
98 | statement;

99 | (c) Consented to be named as the child's biological father  
100 | on the child's birth certificate;

101 | (d) Voluntarily promised in writing to support the child  
102 | and was required to support the child based on that promise;

103 | (e) Received and disregarded written notice from any state  
104 | agency or any court directing him to submit to scientific  
105 | testing; or

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106 (f) Signed a voluntary acknowledgment of paternity as  
107 provided in s. 742.10(4), Florida Statutes.

108 (4) In the event the petitioner fails to make the  
109 requisite showing required by this section, the court shall deny  
110 the petition.

111 (5) In the event relief is granted pursuant to this  
112 section, relief shall be limited to the issues of prospective  
113 child support payments and termination of parental rights,  
114 custody, and visitation rights. The male's previous status as  
115 father continues to be in existence until the order granting  
116 relief is rendered. All previous lawful actions taken based on  
117 reliance on that status are confirmed retroactively but not  
118 prospectively. This section shall not be construed to create a  
119 cause of action to recover child support that was previously  
120 paid.

121 (6) The duty to pay child support and other legal  
122 obligations for the child shall not be suspended while the  
123 petition is pending except for good cause shown. However, the  
124 court may order the child support to be held in the registry of  
125 the court until final determination of paternity has been made.

126 (7) (a) In an action brought pursuant to this section, if  
127 the scientific test results submitted in accordance with  
128 paragraph (1) (b) are provided solely by the male ordered to pay  
129 child support, the court on its own motion may, and on the  
130 petition of any party shall, order the child and the male  
131 ordered to pay child support to submit to applicable scientific  
132 tests. The court shall provide that such scientific testing be  
133 done no more than 30 days after the court issues its order.

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134        (b) If the male ordered to pay child support willfully  
135 fails to submit to scientific testing or if the mother or legal  
136 guardian or custodian of the child willfully fails to submit the  
137 child for testing, the court shall issue an order determining  
138 the relief on the petition against the party so failing to  
139 submit to scientific testing. If a party shows good cause for  
140 failing to submit to testing, such failure shall not be  
141 considered willful. Nothing in this paragraph shall prevent the  
142 child from reestablishing paternity under s. 742.10, Florida  
143 Statutes.

144        (c) The party requesting applicable scientific testing  
145 shall pay any fees charged for the testing. If the custodian of  
146 the child is receiving services from an administrative agency in  
147 its role as an agency providing enforcement of child support  
148 orders, that agency shall pay the cost of the testing if it  
149 requests the testing and may seek reimbursement for the fees  
150 from the person against whom the court assesses the costs of the  
151 action.

152        (8) If relief on a petition filed in accordance with this  
153 section is granted, the clerk of the court shall, within 30 days  
154 following final disposition, forward to the Office of Vital  
155 Statistics of the Department of Health a certified copy of the  
156 court order or a report of the proceedings upon a form to be  
157 furnished by the department, together with sufficient  
158 information to identify the original birth certificate and to  
159 enable the department to prepare a new birth certificate. Upon  
160 receipt of the certified copy or the report, the department  
161 shall prepare and file a new birth certificate that deletes the

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162 name of the male ordered to pay child support as the father of  
163 the child. The certificate shall bear the same file number as  
164 the original birth certificate. All other items not affected by  
165 the order setting aside a determination of paternity shall be  
166 copied as on the original certificate, including the date of  
167 registration and filing. If the child was born in a state other  
168 than Florida, the clerk shall send a copy of the report or  
169 decree to the appropriate birth registration authority of the  
170 state where the child was born. If the relief on a petition  
171 filed in accordance with this section is granted and the mother  
172 or legal guardian or custodian requests that the court change  
173 the child's surname, the court may change the child's surname.  
174 If the child is a minor, the court shall consider whether it is  
175 in the child's best interests to grant the request to change the  
176 child's surname.

177 (9) The rendition of an order granting a petition filed  
178 pursuant to this section shall not affect the legitimacy of a  
179 child born during a lawful marriage.

180 (10) If relief on a petition filed in accordance with this  
181 section is not granted, the court shall assess the costs of the  
182 action and attorney's fees against the petitioner.

183 (11) Nothing in this section precludes an individual from  
184 seeking relief from a final judgment, decree, or order or from  
185 challenging a paternity determination as otherwise provided by  
186 law.

187 Section 2. Rule 1.540, Florida Rules of Civil Procedure,  
188 is repealed.

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189 |           Section 3. This act shall take effect July 1, 2006, except  
190 | that section 2 of this act shall take effect only if this act is  
191 | passed by a two-thirds vote of the membership of each house of  
192 | the Legislature.